



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Hillsborough County Sheriff

Complainant

v.

AFSCME Local 3657, Hillsborough County
Sheriff's Department Employees

Respondent

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Case No: G-0012-7

Decision No. 2005-147

PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

The Hillsborough County Sheriff, James Hardy (hereinafter "the County") filed an improper practice complaint on July 22, 2005 alleging that AFSCME Local 3657, Hillsborough County Sheriff Employees (hereinafter "the Union") violated RSA 273-A:5 II (a), (f) and (g), as well as RSA 273-A:4, by, *inter alia*, failing to follow the grievance procedure, wrongfully filing for arbitration, and unilaterally bypassing the negotiated provisions of the parties' grievance procedure, in its' pursuit of four (4) grievances. The County's complaint consisted of four separate counts, three of which, as described in Paragraph 1 of the Decision section below, were resolved during the instant pre-hearing conference.

The remaining allegations, set forth in Count IV of the complaint, claim that the Union filed a class action grievance on January 28, 2005 alleging a violation of Article VII of the parties' collective bargaining agreement ("CBA") when the Sheriff hired an individual for a temporary federally funded grant position. The County asserts that the position complained of is temporary in nature and not covered by the CBA. Moreover, even if the position is deemed to be grievable, the County contends that the Union has not followed the grievance procedure because of its' by-pass of the pre-arbitration step. As a result, the County maintains that the Union has violated the contract and the grievance must be dismissed. The County therefore requests that the PELRB (1) find that the Union has committed an unfair labor practice, (2) order the Union to cease and desist in its violation of the law, (3) award fees and costs to the County, and (4) grant such other relief as it deems just and proper.

The Union filed its answer denying the County's charge on August 18, 2005. Specifically as to Count IV, while the Union admits that a grievance was filed, it denies that the position in question is "temporary." Answering further, the Union states that in accordance with RSA 273-A:1, IX, an employee shall not be determined to be in a temporary status solely by reason of the source of funding for the position in which he or she is employed. Whereas the County argues that the position is temporary because it is a grant-funded position, the law provides that it cannot be excluded from coverage under the CBA merely on this basis. As to the alleged failure to comply with the grievance procedure, the Union submits that the grievance was presented at Step 2 of the written procedure, the request for pre-arbitration, on or about February 1, 2005 and that the Sheriff denied this request on or about February 9, 2005. The Union therefore maintains that it has fully complied with the parties' grievance procedure. Accordingly, the Union requests that the PELRB (1) dismiss the County's unfair labor practice charge; (2) order the parties to proceed to arbitration on the underlying grievance; (3) award all attorney's fees and costs to the Union; and (4) grant whatever further relief it deems just and proper.

A pre-hearing conference was conducted before the undersigned hearing officer on November 16, 2005 at PELRB offices, Concord, New Hampshire.

PARTICIPATING REPRESENTATIVES

For the County: Carolyn M. Kirby, Esq.

For the Union: Erin L. Goodwin, Esq..

ISSUES PRESENTED FOR BOARD REVIEW

- (1) Whether the position referenced in the Union's grievance is a "temporary" position and therefore does not constitute a public employee under RSA 273-A:1, IX (d) and is not covered by the CBA.
- (2) If the position is covered by the CBA, whether the Union violated the CBA and RSA 273-A:5 II (a), (f) and/or (g) when it unilaterally by-passed the pre-arbitration step set forth in the parties' contractual grievance procedure and sought to arbitrate the grievance.

STIPULATED FACTS

The parties stipulated to the following facts:

1. AFSCME Local 3657 (hereinafter the "Union") is the certified exclusive representative of certain employees at the Hillsborough County Sheriff.
2. The Hillsborough County Sheriff (hereinafter the "County") is a public employer within the meaning of RSA 237-A.

3. The Union and the County are parties to a Collective Bargaining Agreement (hereinafter "CBA") dated July 1, 2003 through June 30, 2005.
4. The Union filed a grievance complaining of a violation of Article VII of the CBA when the Sheriff hired an individual for a federally funded position.

WITNESSES

For the County:

1. Lieutenant Roger Matte, Step I - Supervisor
2. James Hardy, Hillsborough County Sheriff
3. Arthur Durette, Chief Deputy
4. Neil Kurk, State Representative

For the Union:

1. Ernest Castle, Chapter Chair
2. Steve Lyons, AFSCME Staff Representative
3. Harold "Red" Wheeler, Steward

Both parties reserve the right to amend their List of Witnesses in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order or, upon proper showing, later with reasonable notice to the other party. It is understood that each party may rely on the representations of the other party that witnesses appearing on their respective list will be available at the hearing.

EXHIBITS

Joint Exhibits:

1. July 1, 2003 – June 30, 2005 Collective Bargaining Agreements.
2. Grievance documentation.

For the County:

1. Documentation related to the position at issue, including grant information.

For the Union:

None other than those marked as "Joint," above.

Both parties reserve the right to amend their List of Exhibits in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order or, upon proper showing, later with reasonable notice to the other party. Copies of all exhibits are to be submitted to the presiding officer in accordance with Pub 203.02. It is understood that each party may rely on the representations of the other party that the exhibits listed above will be available at the hearing.

LENGTH OF HEARING

The time set aside for this hearing will be one-half (½) day.

DECISION

1. At the outset of the conference, counsel for the parties informed the undersigned hearing officer that the following agreement had been reached: Counts I, II and III of the County's complaint are withdrawn without prejudice in exchange for the Union's withdrawal of the underlying grievances in Counts II and III. Accordingly, by this memorandum and order, Counts I, II and III of the complaint are hereby deemed withdrawn and administratively dismissed. The instant matter shall therefore proceed solely on Count IV.
2. During the course of the conference, the County indicated that it was alleging that the grievance described in Count IV of the complaint was filed in an untimely manner, therefore constituting a violation of the CBA and RSA 273-A. It was noted that the complaint, as drafted, was silent as to this issue, and the County was unable to provide the factual basis for the additional claim. Accordingly, if the County elects to further proceed on an issue of timeliness, it shall file an amended complaint to that effect with the PELRB, with a copy to the Union, on or before **November 23, 2005**.
3. The parties' counsel shall meet, or otherwise confer, in order to exchange documents and reach agreement on exhibits, and to reach further factual stipulations in addition to those listed above, relative to the claim(s) in Count IV. If the parties are successful in reaching additional stipulations of fact, counsel shall memorialize those facts and file that document with the PELRB on or before **November 23, 2005**.
4. The party representatives shall forward any amendments to, or deletions from, their Witness and Exhibit lists, as detailed above, to the opposing representative or counsel, and to the PELRB, on or before **November 23, 2005**. The party representatives shall meet, or otherwise arrange, to pre-mark any exhibits, for identification, prior to the time of hearing and have sufficient copies available for distribution at the hearing as required by Pub 203.02.

5. Unless otherwise ordered as a result of the filing of any subsequent motion or for other good cause shown, an adjudicative proceeding between the parties will be held on:

November 29, 2005 @ 9:30 AM

at the offices of the Public Employee Labor Relations Board, Concord, New Hampshire.

So ordered.

Signed this 16th day of November, 2005.



Peter C. Phillips, Esq.
Hearing Officer

Distribution:

Erin Goodwin, Esq.

Carolyn M. Kirby, Esq.